

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GENERAL HOSPITAL
CORPORATION and
DANA-FARBER CANCER
INSTITUTE, INC.,

Plaintiffs,

v.

ESOTERIX GENETIC
LABORATORIES, LLC and
LABORATORY CORPORATION
OF AMERICA HOLDINGS,

Defendants.

C.A. No. 1:18-cv-11360-IT

JOINT SUBMISSION OF THE PARTIES

The plaintiffs The General Hospital Corporation and Dana-Farber Cancer Institute, Inc. and the defendants Esoterix Genetic Laboratories, LLC and Laboratory Corporation of America Holdings (a/k/a Laboratory Corporation of America) jointly submit for inclusion as part of the record a less redacted version of Exhibit H, the License Agreement, to the Second Amended Complaint. This submission is being filed by the parties with the permission of the Court at the January 23, 2019 hearing.

The attached version of the License Agreement, Exhibit H to the Second Amended Complaint, now includes Section 1.34, the definition of “AVERAGE REIMBURSEMENT,” which was previously redacted by the parties. More specifically, the License Agreement, Exhibit H to the Second Amended Complaint, now includes Section 1.34, which states:

1.34 “AVERAGE REIMBURSEMENT” shall mean, with respect to each REPORTING PERIOD, an amount equal to the quotient of (i) the total NET SALES for PROCESSES conducted during such REPORTING PERIOD, divided by (ii) the total number of PROCESSES conducted during the same REPORTING PERIOD.

In addition, the attached version of the License Agreement, Exhibit H to the Second Amended Complaint, now includes part of Section 4.7, which was also previously redacted by the parties. More specifically, the License Agreement, Exhibit H to the Second Amended Complaint, now includes the following pertinent part of Section 4.7:

4.7 Form and Method of Payment. All payments due under this AGREEMENT shall be drawn on a United States bank and shall be payable in United States dollars. Each payment shall reference this AGREEMENT and identify the obligation under this AGREEMENT that the payment satisfies. Any payment payable to DFCI under this AGREEMENT shall be paid to HOSPITAL, as agent for DFCI. Conversion of foreign currency to U.S. dollars shall be made at the conversion rate existing in the United States, as reported in The Wall Street Journal, on the last working day of the applicable REPORTING PERIOD. Such payments shall be without deduction of exchange, collection or other charges, and, specifically, without deduction of withholding or similar taxes or other government imposed fees or taxes, except as permitted in the definition of NET SALES. Checks for all payments due to the HOSPITAL and to COMPANY under this AGREEMENT shall be made payable to HOSPITAL and to COMPANY and shall be addressed as set forth in Section 13.2. Payments via wire transfer should be made as follows:

The remainder of Section 4.7 of the License Agreement, which is just the wire instructions, remains redacted and out of the record.

WHEREFORE, the parties jointly submit the attached less redacted version of the License Agreement, which is Exhibit H to the Second Amended Complaint

Respectfully submitted,
Plaintiffs,
THE GENERAL HOSPITAL
CORPORATION and
DANA-FARBER CANCER
INSTITUTE, INC.
By their attorneys,

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Defendants,
ESOTERIX GENETIC LABORATORIES,
LLC and LABORATORY CORPORATION
OF AMERICA HOLDINGS,

By their attorneys,

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Dated: January 28, 2019

CERTIFICATE OF SERVICE

I, Carolyn A. Marcotte, certify that on January 28, 2019, this Joint Submission filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to the non-registered participants.

/s/ Carolyn A. Marcotte

Carolyn A. Marcotte